

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY
NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JAN 13 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellee,)	2 CA-CR 2007-0411
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
VINCENT A. BONANNO, JR.,)	Rule 111, Rules of
)	the Supreme Court
Appellant.)	
)	

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200700134

Honorable James Conlogue, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Laura P. Chiasson

Tucson
Attorneys for Appellee

Janelle A. Mc Eachern

Chandler
Attorney for Appellant

E S P I N O S A, Judge.

¶1 After a jury trial, appellant Vincent Bonanno, Jr. was convicted of aggravated driving under the influence of alcohol (DUI) with a suspended license, aggravated driving with a blood alcohol concentration (BAC) of .08 or more while his license was suspended, aggravated DUI with two prior convictions pursuant to A.R.S. §§ 28-1381 and 28-1383, and aggravated driving with a BAC of .08 or more with two prior convictions pursuant to §§ 28-1381 and 28-1383. He was sentenced to four concurrent, presumptive, 4.5-year terms of imprisonment. On appeal, he contends there was insufficient evidence for the jury to conclude that he was driving under the influence of alcohol or that his BAC was .08 or higher within two hours of driving.¹

Factual and Procedural Background

¶2 We view all evidence in the light most favorable to sustaining the jury's verdicts, resolving all conflicts and drawing all reasonable inferences against the defendant. *See State v. Salman*, 182 Ariz. 359, 361, 897 P.2d 661, 663 (App. 1994). In June 2006, a Sierra Vista police officer observed Bonanno's truck speeding. As he followed the truck to a restaurant parking lot, the officer also saw Bonanno make an "inappropriately wide" turn. In the parking lot, the officer spoke with Bonanno, who admitted his driver's license was suspended. While they were speaking, the officer smelled alcohol on Bonanno's breath and noticed that his eyes were watery and bloodshot. When asked if he had been drinking,

¹Bonanno challenges the DUI and BAC findings that underlie all four convictions, but does not dispute that his license was suspended and that he had two prior convictions.

Bonanno responded that he “had a six pack.” At the officer’s request, he completed three field sobriety tests. Based on his performance, the officer believed he was impaired and arrested him. The officer drew a sample of Bonanno’s blood, which later testing showed to contain an alcohol concentration of .213.

¶3 At trial, Bonanno presented an expert witness who testified that field sobriety tests are unreliable. Bonanno also attempted to impeach the arresting officer by eliciting testimony about the difficulty of an officer’s remembering the details of a traffic stop after several months. The jury found Bonanno guilty, and he was sentenced as noted above.

Discussion

¶4 “[T]o warrant reversal, ‘it must clearly appear that upon no hypothesis what[so]ever is there sufficient evidence to support the conclusion reached by the jury.’” *State v. Johnson*, 215 Ariz. 28, ¶ 2, 156 P.3d 445, 446 (App. 2007), *quoting State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). Bonanno asserts the jury’s guilty verdicts were not supported by substantial evidence, maintaining that his driving was appropriate and, although the arresting officer testified Bonanno smelled like alcohol and had bloodshot eyes, “there were no other signs of impairment . . . as would be expected of someone who had consumed as much alcohol as [he] is alleged to have consumed.”² He also

²Bonanno devotes portions of his argument to his claim that he was not exhibiting “specific driving cues” or “signs of impairment” in traffic to justify his initial stop and arrest. At trial, Bonanno moved to suppress evidence, arguing the police officer had seized him “well before [there was] probable cause to arrest him.” On appeal, he does not challenge the trial court’s denial of this motion. Accordingly, Bonanno has failed to preserve any argument

suggests the officer's testimony was incredible because much of it was derived from memory and not documented in the "questionnaire portion of the police officer's report." Bonanno additionally disputes the reliability of various sobriety tests and implies that the blood test results supporting his convictions of the BAC charges were somehow deficient because "[his] name was misspelled and the officer's writing was sloppy."

¶5 These arguments are without merit. Although Bonanno claims he exhibited no signs of impairment other than bloodshot eyes and an odor of alcohol, he does not dispute that the officer observed him make an "inappropriately wide" turn, that he told the officer he had drunk "a six pack," or that he performed poorly on three field sobriety tests. Furthermore, he does not meaningfully dispute his BAC result of .213, as discussed below. Accordingly, there was ample evidence to support the jury's conclusion that Bonanno had been driving while impaired. *See State v. George*, 206 Ariz. 436, ¶ 3, 79 P.3d 1050, 1054 (App. 2003) (appellate court will only reverse conviction for "complete absence of probative facts to support the verdict").

¶6 Bonanno nonetheless argues that the state's evidence should be disregarded because, at trial, his expert witness testified both that it would be difficult for an officer to remember details several months after an arrest and that field sobriety tests are unreliable. The mere existence of conflicting evidence, however, does not render the state's evidence

that the initial stop or arrest was illegal and we do not address the issue. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (failure to argue a claim constitutes waiver of that claim on appeal).

insufficient. *See State v. Atwood*, 171 Ariz. 576, 597, 832 P.2d 593, 614 (1992) (defendant's conflicting evidence did not outweigh state's ample evidence supporting conviction), *disapproved of on other grounds by State v. Nordstrom*, 200 Ariz. 229, ¶ 25, 25 P.3d 717, 729 (2001); *State v. Manzanedo*, 210 Ariz. 292, ¶ 3, 110 P.3d 1026, 1027 (App. 2005) (jury entitled to weigh conflicting evidence). Moreover, the jury was free to credit the testimony of the arresting officer while discounting that of the expert witness. *See State v. Cid*, 181 Ariz. 496, 500, 892 P.2d 216, 220 (App. 1995) (witness credibility is province of fact finder, whose determinations appellate court will not second-guess).

¶7 Bonanno also apparently disputes his BAC convictions by asserting that “the evidence provided by the D[e]partment of P[ublic] S[afety] technician indicated that the defendant's name was misspelled and the officer's writing was sloppy.” But Bonanno does not explain how any misspelling or poor penmanship invalidated the blood test results, nor does he support his implicit argument with the citation of any authority. We therefore do not consider this contention further. *See Ariz. R. Crim. P. 31.13(c)(1)(vi)*; *State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004); *see also State v. Jaeger*, 973 P.2d 404, ¶ 31 (Utah 1999) (“[T]his court is not ‘a depository in which the appealing party may dump the burden of argument and research.’”), *quoting State v. Bishop*, 753 P.2d 439, 450 (Utah 1988). Because the state presented ample evidence, including blood test results showing Bonanno's BAC to have been .213 within one hour after he was stopped, substantial evidence supported the jury's conclusion that he had had a BAC of .08 or higher within two hours of driving.

Disposition

¶8 For the foregoing reasons, Bonanno's convictions and sentence are affirmed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

JOHN PELANDER, Chief Judge